

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 3010 OF 2005

8th August, 2005

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Between:

M/s All India Majlis Tameer-E-Millat

Rep. By its General Secretary Sri Mohd.

Yousuf Rahmatullah s/o Sri Ahmed Hidayathulla

Muslim, aged 59 years, with its office at Madina

Mansion, Nartayanguda, Hyderabad. ...Petitioner

A N D

1. Government of India rep. By its Secretary

Ministry of Home Affairs, New Delhi and Others. ...Respondents

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ORDER:

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1. The petitioner M/s All India Majlis Tameer-E-Millat represented by its General Secretary Mohd. Yousuf Rahmathullah assails the actions of respondents 1 and 2 in

not issuing/allotting registration number in favour of the petitioner organization based on the application already submitted to the authorities concerned.

2. The case of the petitioner in brief as set out in the affidavit filed in support of the writ petition is as follows:

3. The petitioner organization is a body registered under Hyderabad societies Registration Act in the year 1950. The aims and objectives of the petitioner organization are; to propagate Islamic Teaching to exert for advancement of Indian Muslims and to cultivate mutual relations and preservation and development of Urdu as common language of the land. The activities of the petitioner organization are mainly religious education, promoting the talents of the younger generations by holding elocution, debating and essay writing competitions etc. The petitioner organization has been receiving periodical contributions from various sources. The petitioner organization is purely a non-political organization without any leaning to any political party in the country. When the respondents 1 to 3 declared the petitioner organization as a political organization, a writ petition being W.P.No.7657 of 1982 came to be filed. The said writ petition was allowed on 19-9-1986. The order passed in the writ petition was unsuccessfully challenged by the respondents therein by filing Writ Appeal NO. 785 of 1998. After disposal of Writ Appeal, the petitioner organization addressed several letters seeking for issuance of a Registration Number to enable the organization to carry on its objectives after duly complying the legal provisions as contained in Section 6 of the Foreign Contribution (Regulation) Act, 1976. Neither the respondents or any authorities have declared at any point of time that the petitioner organization is indulging in activities which are detrimental to the interest of the country or committed any unlawful things, which are against the interest of the country. While so, the respondents without issuing notice to the petitioner organization stopped operations in the bank account standing on the name of the petitioner. The petitioner organization has foreign currency account with 5th respondent bank vide Account NO. SB 01/14307. The transaction came to be stopped with effect from 5-2-2005 in pursuance of the instructions issued by Reserve Bank of India-4th respondent to Andhra Bank-5th respondent. Hence, this writ petition assailing the action of the respondents in freezing the foreign currency account of the petitioner organization with the 5th respondent Bank.

4. Respondents 2 and 5 filed separate counter affidavits. The counter affidavit of the

2nd respondent reads that the petitioner organization is not registered under Foreign Contribution Regulation Act, 1976 hereinafter referred to as FCR Act, 1976. The petitioner organization applied for registration in the wrong proforma which did not include various details required for registration. The petitioner organization was directed vide letter dated 13-3-2000 to submit the application in the prescribed proforma. The Ministry of Affairs had not received any application in proper proforma. But the petitioner organization has been receiving foreign currency in contravention of the violation of FCR, 1976. The Nationalized Banks are guided by the Reserve Bank of India guidelines. Mere submissions of application does not confer any right to the petitioner organization to get registration, unless the application is in proper format. Therefore, the present writ petition is not maintainable.

5. The counter affidavit of the 5th respondent reads that Syed Yaseen, Karim Raza, M.A. Rasheed quraishi as Treasurer, General Secretary and President respectively of petitioner organization applied for opening Savings Bank Account vide application dated 17-10-1997. After processing the application, Savings Bank Account No. 14307 was opened on 20-10-1997. The petitioner organization has been receiving funds from abroad on a regular basis. An amount of Rs. 2.59 crores had flown into the account between the period 1-4-2002 to 31-1-2005 and the petitioner organization had withdrawn 2.25 crores during the said period. The Government of India represented by its Secretary Ministry of Home Affairs-1st respondent vide proceeding No. II/21022(00)NR/2004-FCRA-II (MU), dated 1-9-2004 issued show cause notice to the petitioner for receiving foreign contributions without obtaining permission under F.C.R. Act, 1976. The Reserve Bank of India, Hyderabad-4th respondent vide its proceeding NO. DBOD No. AML. 134/14-1-055/2004-05, dated 29-1-2005 informed that the petitioner organization is not eligible for receipt of foreign contributions. In view of the communication received from the 4th respondent, this respondent was constrained to issue notice dated 5-2-2005, wherein it was clearly stated that the petitioner violated the provisions of the F.C. R. Act, 1976.

6. Heard the learned counsel appearing for the petitioner and A.Rajasekhar Reddy, Assistant Solicitor General appearing for Respondents 1 to 3, learned counsel appearing for respondent NO.4 and learned counsel appearing for respondent No.5.

7. D.Madhava Rao, learned counsel for the petitioner submits that the petitioner organization has been receiving contributions from foreigners since the year 1950 and therefore, there is no need for the petitioner organization to obtain necessary permission from the Government of India under F.C.R. Act, 1976. He further submits that the petitioner organization is not required to obtain any permission from the Government of India, in view of the orders passed in W.P.No. 7657 of 1982 and W.A.No. 785 of 1987. He would contend that there is no reason for the Government of India to direct the petitioner organization to apply for registration under F.C.R.Act, 1976. He has made copious references to the findings recorded in W.P.No.7657 of 1982 and Writ Appeal No. 785 of 1998.

8. The learned Assistant Solicitor General appearing for Respondents 1 to 3 submits that the petitioner organization had been informed to submit revised Form-FC-3 for allotting the registration Number under the FCR Act, 1976. But the petitioner organization instead of submitting revised form FC-3 rushed to the Court and filed this writ petition and therefore, the writ petition is liable to be dismissed.

9. The learned counsel appearing for the 4th respondent submits that the petitioner organization has to obtain permission from the Government of India under Section 6 of the FCR Act, 1976 and therefore the 4th respondent is justified in issuing instructions to the 5th respondent to stop the operation in Savings Bank Account of the petitioner organization.

10. The learned counsel appearing for the 5th respondent submits that 5th respondent is required to follow the guidelines issued by the Reserve Bank of India, Hyderabad-4th respondent under the Banking Regulation Act and therefore the 5th respondent is justified in stopping the operations of the Savings Bank Account of the petitioner organization on the instructions of the 4th respondent. Thus, the action of the 5th respondent cannot be found fault.

11. The petitioner organization earlier filed W.P.No.7657 of 1982 when a Gazette notification dated 15-7-1982 published in the Gazette declaring the petitioner to be an organization of a political nature not being a political party under the explanation to sub-section (1) of Section 5 of the Act of 1976. The writ petition came to be allowed on 19-9-1986. The operative portion of the order passed in the writ petition as follows:

“For all these reasons, in my judgment, in view of the circumstances referred to above, the act complained of cannot be styled as legislative in character and therefore cannot claim immunity from adopting the principles of natural justice. It is obligatory on the part of the respondent-authority before declaring the petitioner herein as an organization of political nature within the meaning of Explanation to Section 5(1) of the Act, to give notice and opportunity. Consequently, the impugned notification in so far as it relates to the case of the petitioner is quashed and the writ petition is allowed. No costs.”

12. The judgment passed in W.P.No.7657 of 1982 came to be challenged in Writ Appeal No. 785 of 1987. The said writ appeal ended in dismissal. The operative portion of the order in Writ Appeal is as follows:

“Since, admittedly no notice was given to the respondent-organization and no reasonable opportunity was provided to explain as to why the respondent-organization should not be treated as an organization of political nature not being a political party. There is no alternative except to set aside the impugned notification. We accordingly set aside impugned notification and held that the judgment of the learned single judge does not suffer from any infirmity.

However, we make it clear that we have not expressed any opinion whatsoever with regard to the merits of the case and we do not propose to express any opinion as to whether the respondent-organization is an organization of political nature not being a political party. IT is perfectly open to the appellants herein to issue appropriate notice in this regard and give reasonable opportunity to the respondent to submit its explanation and consider the same and pass appropriate orders in accordance with law.

For the aforesaid reason, the Writ Appeal fails and it is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.”

13. It is explicit from the orders passed in the writ petition and the writ appeal, the issue raised therein was whether the Central Government was justified in issuing a

notification dated 15-7-1982 declaring the petitioner to be an organization of political nature not being a political party under Explanation 2 (e) (1) of the Act 1976. Since the issue involved in the present writ petition is no way connected with the notification dated 15-7-1982, the orders passed in Writ Petition 7657 of 1982 and Writ Appeal No. 785 of 1987 have no relevance to the issue involved in the present writ petition.

14. Admittedly, the Government of India directed the petitioner organization to submit application enclosing a copy of Form C-3 currently in use for registration under the FCR Act, 1976 vide letter dated 3-3-2000. The petitioner organization instead of submitting the application in the required format asserted that the petitioner organization is not a new organization and therefore, there is no need of obtaining registration under the FCR Act, 1976.

15. The issue that falls for consideration is whether the stand of the petitioner organization can be justified.

16. It is no more in dispute that the petitioner organization is receiving foreign contributions as defined within the meaning of the FCR Act, 1976. Section 2 (c) of the FCR Act, 1976 defines foreign contribution as follows:

“foreign contribution”, means the donation, delivery or transfer made by any foreign source:-

- i. *of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift does not exceed one thousand rupees.*
- ii. *Of any currency, whether Indian or foreign.*
- iii. *Of any foreign security as defined in clause (i) of section 2 of the Foreign Exchange Regulation Act, 1973.*

Explanation: A donation delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Under Section 6 of the Act : No association (other than an organization referred to in sub-section (1) of Section 5 having a

definite cultural, economic educational, religious or social programme shall accept foreign contribution unless such association, register itself with the Central Government in accordance with the rules made under this Act”.

17. It is explicit from Section 6 of the FCR Act, 1976, since the petitioner organization has been receiving foreign contributions, it is required to be registered with Central Government in accordance with the provisions of the Act. The Central Government directed the petitioner organization to submit a copy of Form C-3 currently in use for grant of necessary registration under the FCR Act, 1976. The petitioner organization instead complied the direction of Central Government and rushed to the Court by filing the writ petition.

18. Therefore, I find the writ petition is devoid of merits and accordingly the same is hereby dismissed. No order as to costs.

B.Seshasayana Reddy, J.

8th August, 2005.

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